

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 5TH JANUARY 2007 / 15TH POUSHA, 1928

C.R.P.No. 237 of 2006(G)

(AGAINST THE JUDGMENT DATED 19.01.06 IN C.M.A.135/03 ON THE FILE OF
DISTRICT COURT, PALAKKAD FROM THE ORDER DATED 12.6.03 IN I.A.1431/01
IN I.A.1361/2000 IN O.S.277/2000 ON THE FILE OF MUNSIFF COURT, ALATHUR.)

REVISION PETITIONERS/APPELLANTS/RESPONDENTS-DEFENDANTS

1. VASU (VASUDEVAN), S/O. VELAPPAN,
RESIDING AT MULANTHOTIL,
PARUVASSERI DESOM,
AYYAKKAD AMSOM,
ALATHUR TALUK.
2. INDIRA, W/O. VASU,
-DO-
3. RADHAKRISHNAN, S/O. VASU,
-DO-
4. CHAMI, S/O. KANDAN,
-DO-
5. PREMA, W/O. CHAMI,
-DO-

BY ADV. SRI.T.M. CHANDRAN

RESPONDENT/RESPONDENT/PETITIONER-PLAINTIFF

VIJAYAKUMAR, S/O. LATE M.C.VISWANATHAN,
RESIDING AT MULANTHOTIL,
PARUVASSERY DESOM, AYYAKKAD AMSOM,
ALATHUR TALUK.

BY ADV. SRI. RAJESH SIVARAMAN KUTTY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

C.R.P.237/06

ORDER ON I.A.1150/06 IN C.R.P.237/06

DISMISSED.

05.01.07.

SD/-M.SASIDHARAN NAMBIAR, JUDGE.

M.SASIDHARAN NAMBIAR, J.

C.R.P.NO. 237 OF 2006

DATED THIS THE 5TH DAY OF JANUARY, 2007

ORDER

Revision petitioners are the defendants in O.S.277/2000 on the file of Munsiff Court, Alathur. Respondent is the plaintiff. In the suit an order of temporary injunction was granted in favour of respondent. Respondent filed I.A.1431/2001, an application under Order XXXIX Rule 2A of Code of Civil Procedure contending that in willful violation of the order of temporary injunction, petitioners are not permitting respondent to cultivate the property and therefore petitioners are to be detained in civil prison. Petitioners filed an objection disputing the allegation. It was contended that the attempt of respondent is to reduce the southern pathway by encroaching a portion of the pathway, which was not allowed by petitioners and petitioners did not object to the cultivation of the property and therefore the application is to be dismissed.

2. When learned Munsiff took up the petition for enquiry, petitioners as well as their counsel remained absent and petitioners were set exparte. Petitioners thereafter filed I.A.188/03, an application to set aside the exparte order. It was allowed on payment of cost of

Rs.1,000/. But on the failure of petitioners to pay the cost as directed, the exparte order was maintained. Thereafter respondent and his witnesses were examined. As per order dated 12.6.03, learned Munisff allowed the application and directed to detain petitioners, who are defendants 1,3 and 4 in civil prison for two months. Defendants 2 and 5 were warned and let off. Petitioners challenged that order before District Court, Palakkad in C.M.A.135/03. As per order dated, 19.1.06, learned District Judge dismissed the appeal. It is challenged in this revision petition filed under Section 115 of Code of Civil Procedure.

3. Learned Counsel appearing for petitioners and respondent were heard.

4. On hearing learned Counsel for both sides, it is clear that petitioners did not get an effective opportunity to meet the allegation of willful violation of the order of temporary injunction. True, the original order setting them exparte was set aside by learned Munisff on terms and as petitioners did not pay the cost, the order setting them exparte was maintained and without hearing petitioners, the order to detain them was passed. There is force in the submission of learned Counsel appearing for petitioners that in the circumstances of the case, especially when petitioners were directed to be detained in civil prison affecting their liberty, appellate Court should have atleast granted an opportunity to

petitioners to cross examine the witnesses and defend the contentions of respondent that they willfully violated the order of temporary injunction. In such circumstances, the order passed by learned Munsiff confirmed by learned District Judge are set aside. I.A.1431/01 is restored and remanded to learned Munsiff for fresh disposal. Out of Rs.5,000/-, deposited before learned Munsiff, as per order of this Court dated 2.5.06, Rs.1,000/-, the cost originally awarded by learned Munsiff has to be paid to respondent/plaintiff. Learned Munsiff is to grand opportunity to petitioners to cross examine the witnesses already examined and also permit petitioners to let in further evidence. If advised, respondent is also entitled to adduce further evidence. Learned Munsiff is to bear in mind that detention in civil prison is not mandatory under order XXXIX Rule 2A of Code of Civil Procedure. The balance amount of Rs.4,000/- deposited by petitioners is to be returned back to them.

M.SASIDHARAN NAMBIAR, JUDGE

Acd

